Attorney Docket No.: **3251/FBR (031035-87578)**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor	:	Edgar Pau et al.
Serial No.	:	09/965,605
Filed	:	September 27, 2001
Title	:	**Player Choice Game Feature**
Examiner	:	Robert E. Mosser
Group Art Unit	:	3714
Confirmation No.	:	4654

Commissioner for Patents
P.O. Box 1450
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DECLARATION OF EDGAR PAU

S I R:

I, Edgar Pau, Applicant of the above referenced application, declare as follows:

1. I am employed as a game designer by Aristocrat Technologies Australia Pty Ltd. I have held this position for four years and six months. Prior to that I worked in Aristocrat's configuration department for three and a half years. From 1992 to 1996, I worked as a gaming machine attendant at St George Leagues club in Sydney. This I have been working in the legalized gaming industry for twelve years and have considerable experience of that industry and it particular of the types of games played on such machines.

2. I have reviewed the prosecution history of US Patent Application No 09/965,605 including the office actions dated 12 June 2003, 6 November 2003 and 31 March 2004 and the Examiner's arguments as set out in those office actions. I refer in particular, to the office action dated 31 March 2004 in which claims 1 to 4, 6 to 9, 12 and 14 to 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Halloran (US Pat. No 6,450,883) in view of Baerlocher et al (US Pat. No 5,788,573). I have also reviewed the "Response to Office Action" date 4 February 2004 and in particular, the remarks set out in that office action concerning O'Halloran and Baerlocher. I agree with those remarks

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and make particular reference to the paragraph bridging pages 7 and 8 where it is, in my view, correctly stated that O'Halloran is simply *"a minor variation of a double up event"*. I note that on pages 7 to 10 of the office action dated 31 March 2004 that the Examiner sets out a "Response to Arguments", and in particular, a response to the arguments set out in the response to office action of 4 February 2004. I note that on page 7, the Examiner rejects the remarks equating O'Halloran to a simple "double up" feature since O'Halloran contains more than two distinct selections. The Examiner appears to take the view that since more than two selections are allowed, O'Halloran could not be considered to be a variation of a "double up" game. However, the key to a "double up" game is, as I have explained below, not that two selections are allowed, but the neutral effect on the overall return to player of the "double up" game feature.

3. I also note that in the middle paragraph on page 8, the Examiner concludes that the operation of the game of O'Halloran does not teach a 100% theoretical return and does affect the calculation of the overall theoretical return to the player. That statement is incorrect. As I have explained below, whether a player chooses to play the bonus game of O'Halloran or indeed any traditional "double up" feature as described below or not, has no effect on the overall theoretical return to the player.

4. If we turn to O'Halloran itself, we see that on column 1, in the background of the invention, O'Halloran refers to a "double up" game in the following terms. *"Traditional games played on gaming machines, include spinning reel games, where various combinations of indicia appearing on simulated spinning reels across one or more win lines result in credits being awarded and added to the player's credit total. Other gaming machines offer card games, such as draw poker or black jack. Common to both forms of games, is the secondary or bonus game feature, whereby, on any winning game of the primary or base game, a bonus mode is entered. In the bonus mode, the winnings from the first game can be wagered, typically in a "double up" scenario, viz., the winnings can be doubled or lost. Such double up game features typically involve a binary choice such as selecting whether a face down card is of a red or black suit."* That double up scenario is, in my experience, the most common "double up" feature.

5. As is well known in the gaming industry, a gaming machine has to provide a certain average of return to player percentage during play of the gaming machine. The return to

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player percentage required, is mandated by the regulations of the jurisdiction in which the gaming machine is played. Typically, required return to player percentages range from 85% to 95%. If a gaming machine is located in a jurisdiction where a 95% return to player percentage is required, for every dollar a player puts into the machine, on average, ninety five cents should be returned to the player. The return to player is an average based on the number of plays of the underlying/base game. Every one dollar wagered, should return on average, ninety five cents. Hence, if a player puts a dollar in a gaming machine one hundred times, i.e. a total of $100.00 for 100 plays each costing one dollar, he should on average, receive $95.00 back. With a traditional "double up" game, as described in the background of the invention, the bonus game feature is provided on any winning game of the underlying or base game. The reason that this can be done, is because the bonus game has no effect on the return to player percentage. The reason for this, is quite simply that the potential return to the player, is matched to the odds of winning. Specifically, in the "double up" game, the player has a 1 in 2 chance of doubling their money. By way of example, lets assume that that a player makes eight wins of $1.00 on a gaming machine offering a "double up" feature. If the player chooses not to play the "double up" feature, the player banks $8.00. If the player chooses to play the "double up" feature on all eight wins, then by the law of averages they would double their money 50% of the time and make four wins of $2.00 each, being a total $8.00. The player can then either bank the $8.00 or go onto to try and double the four wins of $2.00 once more. If he or she tries to double the four wins of $2.00 each, then on average, he or she will succeed 50% of the time and end up with two wins of $4.00, a total of $8.00 once more. If he or she once again tries to double the two wins of $4.00, then with odds of 50%, he or she can be expected to succeed once and fail once ending up with a single prize of $8.00. Hence, it is clear that playing a "double up" game, has no affect whatsoever on the return to player percentage of the gaming machine. Note that when calculating the return to player, the "plays" of the "double up" feature, do not count as plays for calculating the return to player as no new credits are paid to play the "double up" feature.

6. In my opinion, and with reference to page 7, lines 6 to 8 of the Response to Arguments, O'Halloran is a development of a "double up" feature, not because it offers a binary

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choice, but because it offers a player a chance of multiplying a win on an underlying game which does not affect the return to player percentage for the machine in the same way as a traditional "double up" game does not affect the return to player percentage of a gaming machine. That this is the case, is clear from looking at the detailed description of O'Halloran. See for example column 3 lines 15 to 20 *"For any player of the base game there will be a resulting combination of symbols appearing on the three reels and, thus on the selected number of win lines. If there is a winning combination on any of the win lines, then the supplemental or bonus game feature is entered."* Hence, it is clear that as in the existing "double up" games described in the Background of the Invention of O'Halloran, the O'Halloran bonus game may be triggered on any win in the base or underlying game.

7. Next we turn to the O'Halloran bonus game which is shown in Figures 4 and 5. Column 3 line 25 *et seq.*, describes how the game works. *"In this example, the player has won 52 credits in play of the base game (i.e. FIG. 2), and the bonus game feature is now entered such that the display presents the various indicia as shown at FIG. 4. Particularly, there are three rows respectively of 2, 3 and 4 playing cards arranged face down .... The three indicia 60, 62, 64 on the right hand side of the display 40', indicate to the player the current winnings available to waged in the bonus game feature and the possible winnings. With reference to the indicia 70, 72, 74 shown on the left hand side of the display 40', it can be seen that for the top most row of two cards there is a the prospect of doubling the winnings perfectly balanced odds (emphasis added). For the middle row of three cards the prospect of trebling the winnings, and for the bottom most row of four cards, there is a possibility of quadrupling the winnings. The game bonus feature operates by placing a "Joker" card at one position in each of the three rows. It is then for the player to choose one of the rows, and thus the level of the gamble, then select which card within row is a "Joker" card This is done by the player touching the screen* . . . . . ." Note also the paragraph bridging columns 3 and 4 "*as will*

card meaning that the chances of correctly choosing card, are 1 in 4 which directly relates to the win multiplier of x4. Like the "double up" game discussed in the background of O'Halloran, the odds of winning are perfectly balanced with the winnings multiplier. The chance of correctly choosing a card are 1 in N which directly relates to the multiplier of xN.

8. Thus, if we take a an example where a player has twelve wins of $1.00 each, they choose to simply to take the win, they bank $12.00. If they play the x2 multiplier twelve times, then on average they will double their money six times and lose six time and will bank 6 x $2.00 again $12.00. Similarly, if they play the middle line and attempt to triple each win, they will succeed an average four times and lose eight times, thus banking 4 x $3.00 i.e. $12.00. Likewise, if they try and quadruple their money by playing the bottom line, they will succeed on average three times and lose nine times and again end up with $12.00. If the player plays the O'Halloran multiplier on a multiplied win, the same odds apply and the expected average return is the original win. Thus, the return to player percentage is not affected at all by the bonus game of O'Halloran. Whether the player plays the bonus game of O'Halloran or not, makes no difference whatsoever to the return to player percentage of the O'Halloran gaming machine.

9. In summary, the key features of "double up" bonus type games are that they do not affect the return player percentage and they are generally offered on any win in the underlying game. Because of that, is whether the player plays the bonus game or not is irrelevant to the overall return to player percentage of the machine.

10. I have also reviewed US 5,788,573 (Baerlocher) and although Baerlocher provides a bonus game it is a very different type of bonus game to that described and shown in O'Halloran. In contrast with the game of O'Halloran, the bonus game comprises three spinning wheels of fortune. The wheels are spun consecutively. I note from the abstract of Baerlocher, that in one embodiment, there is a one in fifty chance of entering a bonus screen from a main slot machine/phase completion screen, a one in twenty chance of landing on a bonus position in a first wheel spin, a one in forty chance of landing on a bonus position for second wheel spin and a one in two hundred chance of landing on a bonus position for last wheel spin to provide an overall odds of a jackpot of one to eight million. Baerlocher thus, discloses a feature game which is intended to offer a very small

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chance of winning a very large jackpot at odds of eight million to one. In Baerlocher, a player only gets a chance to play the feature game on every fiftieth play. The player is not offered the feature game every time they have a win on the underlying game, as happens in traditional "double up" features and in O'Halloran. Although Baerlocher discloses three wheels of fortune, in contrast with my invention, a player is not allowed to select which wheel of fortune they choose to play after having an opportunity to look at the wheels of fortune and choose one with a particular volatility. In Baerlocher, a player must play the wheels of fortune in a particular sequence and only gets to play the second wheel of fortune if a particular result arises in the first, and is only allowed to play the third wheel of fortune if a particular result arrives from spinning the second wheel.

11. I am advised that the invention as currently proposed to be amended, reads as follows.

"A gaming machine comprising a display means and a game control means arranged to control images displayed on the display means, the game control means being arranged to play an underlying game wherein one or more random events are caused to be displayed on the display means and, if a predefined winning event occurs, the machine awards a prize, wherein on the occurrence of a predefined triggering event, the player is offered a choice of two or more different prize sets, from which the player is allowed to choose one prize set only, each set containing a plurality of prize outcomes, including non winning prize outcomes, and wherein each prize set has the same number of potential outcomes from which prize sets a prize is to be drawn and awarded to the player, wherein the prize is drawn from the prize set selected by the player and wherein the prize outcomes of each prize set are displayed to the player prior to the player selecting a prize set and wherein the prize outcomes are independent of any prize awarded in the underlying game on the occurrence of the predefined triggering event and wherein at least one of the prize sets displays at least two different winning outcomes and wherein the total theoretical return to the player is the same regardless of the prize set the player chooses." I see a number of feature combinations in that claim that are not disclosed in O'Halloran or Baerlocher and in particular, that on the occurrence of a

set has the same number of potential outcomes from which prize sets a prize is to be drawn and awarded to the player, when the prize is drawn from the prize set selected by the player and when the prize outcomes of each prize set are displayed to the player prior to the player selecting a prize set. I note also, that the claims distinguish over O'Halloran in that it recites that it recites that the prize outcomes are independent of any prize awarded in the underlying game on the occurrence of the predefined triggering event and wherein at least one of the prize sets displays at least two different winning outcomes. In O'Halloran there is only one winning outcome in each prize set and the prize outcome in O'Halloran is always a multiple of the prize won in the underlying game.

12. I was not influenced by O'Halloran or Baerlocher when making the invention which is the subject of US Patent Application No 09/965,005. I do not think that it would be obvious to combine O'Halloran and Baerlocher in the manner suggested by the Examiner for a number of reasons. First of all, although O'Halloran and Baerlocher both relate to bonus games for gaming machines, that is where their similarity ends. I recognise O'Halloran to be a variation of a "double up" game in which it can be simply added onto any existing gaming machine and that machine should still change the overall return to player percentages of that machine. Baerlocher on the other hand cannot be. What happens in the Baerlocher bonus game, is part of the calculation of the overall return to player. Hence I would not consider that the bonus games of O'Halloran and Baerlocher to be interchangeable or in any way combinable. Further, I note that Baerlocher teaches that the wheels of fortune must be spun in a particular sequence and there is no suggestion in that document that a player should be allowed to choose one of the three wheels and spin the one that they wish. I note the Examiner's comments on page 9 of the Response to Arguments that *"the invention of Baerlocher teaches altering the number of symbols displayed on a wheel with a fixed element size (Col 7:9-29) and the altering of individual selection odds for a fixed element/fixed symbol size set (Col 6:39-67 & Fig 5), either of which may be used to readily compensate for allowing the player to select the wheels if not spun in hierarchical fashion"* However the paragraph at (Col 7:9-29) merely teaches that the spinning wheels may be simulations. There is nothing surprising in that. Indeed it is well known that spinning reel type gaming machines can either be machines where physical reels are spun or so-called "video reel" gaming machines where

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a video display screen displays simulations of spinning reels. What I do not see in that paragraph is any hint or suggestion that where simulated wheels are used the wheels do not have to be spun hierarchically. Similarly while the passage at Col 6:39-67 & Fig 5 identified by the Examiner refers to changing the selection odds the passage is entirely silent about spinning the reels in anything other than a hierarchical fashion. There is nothing in either paragraph which teaches me or suggest to me, as a person skilled in the art, to allow a player to chose one of the three wheels to spin. The two paragraphs are essentially concerned merely with changing the odds of winning. There clearly nothing in Baerlocher which offers a player a choice of prize sets which may be displayed on spinning wheels having different volatility profiles which can be viewed by the player prior to selection of a set prize/wheel, and nothing in Baerlocher which would suggest that feature to me or, in my opinion, to a person skilled in the art reading Baerlocher.

13. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.
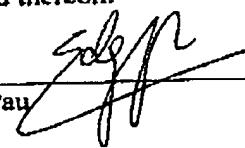
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Date   30 / 6 / 2004.
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